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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CITIZENS FOR PENNSYLVANIA'S FUTURE  
and CHARLOTTE H. O'ROURKE,

Plaintiffs,

v.

ALLEGHENY ENERGY SUPPLY CO. LLC,

Defendant

Civil Action No. 05-0186

COMPLAINT

Introduction

1. This is a citizen suit, brought under Section 304 of the Clean Air Act (CAA), as amended, 42 U.S.C. § 7604. Plaintiff Citizens for Pennsylvania's Future (PennFuture) seeks a declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of costs, including attorneys and expert witness fees, for repeated violations by Allegheny Energy Supply Co. LLC (Defendant) of emission standards in the Pennsylvania State Implementation Plan (SIP) and in the permit issued to Defendant for its Hatfield's Ferry plant (the Plant) under the CAA and the Pennsylvania Air Pollution Control Act (APCA) as alleged in Count 1-8. Plaintiff Charlotte O'Rourke seeks relief for nuisance and trespass by Defendant as alleged in Counts 9 and 10.

2. Defendant's violations at the Plant have resulted in and are resulting in persistent, unlawful emissions of pollutants that are known to cause serious health consequences, including respiratory and cardiovascular disease and premature death. During the period covered by Plaintiff's Notice of Intent (see Paragraph 4 below), Defendant violated standards designed to limit emissions of these pollutants, on average, six out of seven days each week. These violations have resulted in and are resulting in actual and threatened injury to members of PennFuture living near the Plant.

#### Jurisdiction and Venue

3. This Court has subject matter jurisdiction under Section 304(a) of the CAA, 42 U.S.C. § 7604(a), and 28 U.S.C. §§ 1331, 1367.

4. On October 5, 2004, Plaintiff PennFuture gave notice of Defendant's violations of the CAA and APCA, and notice of PennFuture's intent to file a citizen suit, to the Defendant, the Administrator of the United States Environmental Protection Agency (EPA), the Regional Administrator of EPA Region 3, the Governor of Pennsylvania, and the Secretary of the Pennsylvania Department of Environmental Protection (DEP), in satisfaction of the requirements of Section 304(b)(1)(A) of the CAA, 42 U.S.C. § 7604(b)(1)(A); 40 C.F.R. Part 54; and 35 P.S. § 4013.6(d) (Notice of Intent).

5. More than 60 days have passed since the notice described in the preceding paragraph and neither EPA nor DEP has commenced and is diligently prosecuting a civil or criminal action in a court to redress the violations.

6. Venue is appropriate in the Western District of Pennsylvania under Section 304(c)(1) of the CAA, 42 U.S.C. § 7604(c)(1), and 28 U.S.C. § 1391(b), because the Plant is located in this district.

Parties

7. Plaintiff PennFuture is a nonprofit corporation organized and existing under the laws of Pennsylvania with offices in Harrisburg, Pittsburgh, and Philadelphia. PennFuture's purposes include protecting the environment and public health in Pennsylvania, including air quality, through litigation and advocacy.

8. PennFuture members live, work, recreate, and conduct other activities in Greene County, Fayette County, and other parts of Pennsylvania affected by the violations alleged in this Complaint.

9. PennFuture members have suffered, and will continue to suffer, actual and threatened injury to their health and welfare due to the violations of the CAA and the APCA described herein. PennFuture members are exposed and threatened with exposure to particles and other pollution from the Plant. As a result, PennFuture members suffer from and are at increased risk of a variety of adverse health effects that are attributable to particle pollution.

10. Further, PennFuture members have suffered, and will continue to suffer, actual and threatened interference with their use and enjoyment of property and surrounding areas from the violations alleged in this Complaint, including but not limited to deposits on their property.

11. The acts and omissions alleged herein expose PennFuture members to harmful pollution that threatens their health and welfare, interfere with their use and enjoyment of property and surrounding areas, injure their economic interests, deny them protections of their health and well-being guaranteed by the CAA and the APCA, and

negatively impact aesthetic and recreational values. The relief requested herein will redress these injuries.

12. Plaintiff Charlotte H. O'Rourke owns property and resides in Masontown, Pennsylvania. As a result of the acts and omissions alleged herein, Ms. O'Rourke has suffered the harms alleged as to PennFuture members in the preceding paragraphs, including but not limited to threats to her health and welfare, interference with her use and enjoyment of property and surrounding areas, injury to her economic interests, denial of protections of her health and well-being guaranteed by the CAA and the APCA, and negative impacts on aesthetic and recreational values.

13. Defendant Allegheny Energy Supply Co. LLC is the owner and operator of the Hatfield's Ferry power plant, located in Cumberland Township, Greene County, Pennsylvania. The Plant is a coal-fired electricity generating station with three main combustion units.

#### Statutory and Regulatory Background

14. A central purpose of the CAA is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b)(1).

15. To achieve this and other purposes, the states bear primary responsibility under the CAA for regulating sources of air pollution and attaining ambient air quality standards. See, e.g., 42 U.S.C. §§ 7401 (state responsibility), 7410 (state implementation plans).

16. The purposes of the APCA include the protection of public health, safety and well-being of Pennsylvania's citizens and the implementation of the CAA in Pennsylvania. 35 P.S. § 4002(a).

17. Pennsylvania has adopted a state implementation plan (SIP) to fulfill its air quality obligations under the CAA. 40 C.F.R. § 52.2020.

18. Under Pennsylvania law, a person may not permit the emission of visible air contaminants with an opacity either: (1) equal to or greater than 20% for a period or periods aggregating more than 3 minutes in any 1 hour; or (2) equal to or greater than 60% at any time. 25 Pa. Code § 123.41.

19. Under Pennsylvania law, a person may not permit the emission of particulate matter from a combustion unit in excess of 0.1 pound per million Btu of heat input when heat input to a combustion unit is equal to or greater than 600 million Btus an hour. 25 Pa. Code § 123.11.

20. The standards cited in Paragraphs 18 and 19 have been approved by the EPA and incorporated into the Pennsylvania SIP. 40 C.F.R. § 52.2020(c)(1).

21. Additionally, Pennsylvania has adopted an operating permits program under Title V of the CAA for sources of air pollution and incorporated this program into the Pennsylvania SIP. 61 Fed.Reg. 39,597 (1996); 40 C.F.R. § 52.2020(c)(110); 40 C.F.R. Part 70, App. A ("Pennsylvania").

22. The Plant is subject to a Title V/operating permit issued by Pennsylvania DEP on November 29, 2001 under the APCA and DEP's Title V/operating permits program. This permit limits visible emissions in a manner parallel to the terms of 25 Pa.

Code § 123.41, and limits emissions of particulate matter from Boilers 1, 2, and 3 in a manner parallel to the terms of 25 Pa. Code § 123.11.

23. The CAA provides for citizen suits for the violation of an "emission standard or limitation" under 42 U.S.C. § 7604(f)(4). See 42 U.S.C. § 7604(a).

24. As standards or limitations under the Pennsylvania SIP, the visible emission standard cited in Paragraph 18 above and the particulate matter emission standard cited in Paragraph 19 above constitute "emission standards or limitations" under 42 U.S.C. § 7604(f)(4) that are subject to citizen suit under 42 U.S.C. § 7604(a).

25. The APCA also provides for citizen enforcement of the visible emission and particulate matter emission standards. 35 P.S. § 4013.6(c).

26. As standards or limitations established under a permit in effect pursuant to CAA Title V and/or the Pennsylvania SIP, the visible emission limitation and the particulate matter emission limitation contained in the Title V/operating permit constitute "emission standards or limitations" under 42 U.S.C. § 7604(f)(4) that are subject to citizen suit under 42 U.S.C. § 7604(a).

27. The APCA also provides for citizen enforcement of permits issued under the APCA. 35 P.S. § 4013.6(c).

#### **Claims for Relief**

##### **Count 1: Visible Emission Violations of State Implementation Plan (CAA)**

28. The allegations of all preceding paragraphs are incorporated herein by reference.

29. Since at least January of 1999, emissions from Boilers 1, 2, and 3 at the Plant have repeatedly violated and are in violation of the visible emission standards in 25 Pa. Code § 123.41 (see Paragraph 18 above).

30. For the reasons set forth in Paragraph 24 above, these violations of 25 Pa. Code § 123.41 constitute violations of the Pennsylvania SIP and of "emission standards and limitations" under the CAA, 42 U.S.C. § 7604(f).

**Count 2: Visible Emission Violations of Pennsylvania Standards (APCA)**

31. The allegations of all preceding paragraphs are incorporated herein by reference.

32. Since at least January of 1999, emissions from Boilers 1, 2, and 3 at the Plant have repeatedly violated and are in violation of the visible emission standards in 25 Pa. Code § 123.41 (see Paragraph 18 above).

33. These violations of 25 Pa. Code § 123.41 constitute violations of the APCA under 35 P.S. § 400S.

**Count 3: Visible Emission Violations of Title V Permit (CAA)**

34. The allegations of all preceding paragraphs are incorporated herein by reference.

35. Since at least January of 1999, emissions from Boilers 1, 2, and 3 at the Plant have repeatedly violated the visible emission standards in the Title V/operating permit for the Plant.

36. For the reasons set forth in Paragraph 26 above, these violations of visible emission standards in the Title V/operating permit constitute violations of "emission standards and limitations" under the CAA, 42 U.S.C. § 7604(f).

**Count 4: Visible Emission Violations of Title V Permit (APCA)**

37. The allegations of all preceding paragraphs are incorporated herein by reference.

38. Since at least January of 1999, emissions from Boilers 1, 2, and 3 at the Plant have repeatedly violated the visible emission standards in the Title V/operating permit for the Plant.

39. These violations of the Title V/operating permit constitute violations of the APCA under 35 P.S. § 400S.

**Count 5: Particulate Matter Violations of State Implementation Plan (CAA)**

40. The allegations of all preceding paragraphs are incorporated herein by reference.

41. In accordance with the Title V/operating permit for the Plant, compliance with the particulate emission rate identified under the requirements of 25 Pa. Code § 123.11 shall be determined by a certified stack test conducted at least once during the term of the permit.

42. Based on a stack test conducted on November 6 and 7, 2002, emissions from Stack 1 at the Plant have been and continue to be in violation of the particulate matter emission standard of 25 Pa. Code § 123.11.

43. For the reasons set forth in Paragraph 24 above, violations of the particulate matter emission standard of 25 Pa. Code § 123.11 constitute a violation of the Pennsylvania SIP and violations of "emission standards and limitations" under the CAA, 42 U.S.C. § 7604(f).

**Count 6: Particulate Matter Violations of Pennsylvania Standards (APCA)**



44. The allegations of all preceding paragraphs are incorporated herein by reference.

45. In accordance with the Title V/operating permit for the Plant, compliance with the particulate emission rate identified under the requirements of 25 Pa. Code § 123.11 shall be determined by a certified stack test conducted at least once during the term of the permit.

46. Based on a stack test conducted on November 6 and 7, 2002, emissions from Stack 1 at the Plant have been and continue to be in violation of the particulate matter emission standard of 25 Pa. Code § 123.11.

47. These violations of 25 Pa. Code § 123.11 constitute violations of the APCA under 35 P.S. § 4008.

**Count 7: Particulate Matter Violations of Title V Permit (CAA)**

48. The allegations of all preceding paragraphs are incorporated herein by reference.

49. In accordance with the Title V/operating permit for the Plant, compliance with the particulate emission rate identified under the requirements of 25 Pa. Code § 123.11 shall be determined by a certified stack test conducted at least once during the term of the permit.

50. Based on a stack test conducted on November 6 and 7, 2002, emissions from Stack 1 at the Plant have been and continue to be in violation of the particulate matter emission standard contained in the Title V/operating permit.

51. For the reasons set forth in Paragraph 26 above, violations of the particulate matter standard contained in the Title V/operating permit constitute violations of "emission standards and limitations" under the CAA, 42 U.S.C. § 7604(f).

**Count 8: Particulate Matter Violations of Title V Permit (APCA)**

52. The allegations of all preceding paragraphs are incorporated herein by reference.

53. In accordance with the Title V/operating permit for the Plant, compliance with the particulate emission rate identified under the requirements of 25 Pa. Code § 123.11 shall be determined by a certified stack test conducted at least once during the term of the permit.

54. Based on a stack test conducted on November 6 and 7, 2002, emissions from Stack 1 at the Plant have been and continue to be in violation of the particulate matter emission standard contained in the Title V/operating permit.

55. These violations of the Title V/operating permit constitute violations of the APCA under 35 P.S. § 4008.

**Count 9: Nuisance (Plaintiff O'Rourke)**

56. The allegations of all preceding paragraphs are incorporated herein by reference.

57. Plaintiff Charlotte O'Rourke lawfully possesses property near the Plant. Specifically, Ms. O'Rourke owns and resides in her home and surrounding land in Masontown, Pennsylvania.

58. Air pollution from Defendant's Plant, including but not limited to soot and other particles, has substantially interfered with Plaintiff O'Rourke's ability to use and

enjoy her home and surrounding land. Among other things, Ms. O'Rourke sees air pollution from the Plant from her home; must clean sooty deposits from the Plant from her property and outdoor furniture; keeps her windows closed at all times to keep out air pollution from the Plant; has purchased central air filtration for her home because of concerns about pollution from the Plant; keeps her car in the garage so it does not become covered with deposits from the Plant; has stopped working outside in her yard because of air pollution from the Plant; restricts the outside play of her grandchildren at her house because of concerns about air pollution from the Plant; and will suffer reduced resale value of her home and property due to air pollution from the Plant.

59. Defendant's invasion of the use and enjoyment of Plaintiff O'Rourke's home and surrounding land is intentional and/or unreasonable, as Defendant has failed and is failing to use available methods to reduce or eliminate its emissions of soot and other particles.

60. Defendant's invasion of the use and enjoyment of Plaintiff O'Rourke's home and surrounding land is negligent and/or reckless and/or caused by ultrahazardous conduct.

61. Defendant's unreasonable and continuing conduct constitutes an unreasonable interference with Plaintiff O'Rourke's home and surrounding land and has caused her continuing injuries and damages. Specifically, air pollution from the Plant contaminates Plaintiff O'Rourke's property, creates a health hazard to Plaintiff O'Rourke and others on her property, and diminishes the utility, value, and function of the property for many purposes and intended uses.

**Count 10: Trespass (Plaintiff O'Rourke)**

62. The allegations of all preceding paragraphs are incorporated herein by reference.

63. Without the consent of Plaintiff O'Rourke, Defendants have intentionally released air pollution, including but not limited to soot and other particles, that has entered Plaintiff O'Rourke's home and surrounding lands in Masontown, Pennsylvania. This ongoing invasion of Plaintiff O'Rourke's home and surrounding lands as a direct result of Defendant's acts and omissions constitutes a trespass, has caused injuries and damages as alleged in Paragraph 61 above, and is continuing.

**Relief Requested**

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Declare that Defendant has violated and continues to be in violation of visible emission standards, particulate matter emission standards, the CAA, and the APCA;
- (2) Enjoin Defendant from further violations of these standards, the CAA, and the APCA;
- (3) Order Defendant to take all necessary steps to comply with emission standards, including but not limited to installing adequate pollution controls at the Plant;
- (4) Order Defendant to pay civil penalties for its violations;
- (5) Order Defendant to cease all conduct constituting a nuisance and/or trespass to Plaintiff O'Rourke and her property, remediate past harms to Plaintiff O'Rourke's property, and pay damages for nuisance and trespass;
- (6) Award Plaintiff its costs and reasonable attorney and expert witness fees;

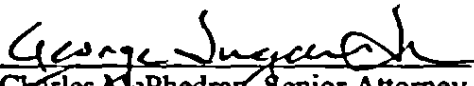
(7) Retain jurisdiction over this action to ensure compliance with the Court's decree; and

(8) Grant such other relief as the Court deems just and proper.

Respectfully submitted,

FOR PLAINTIFF PENNFUTURE  
AND PLAINTIFF O'ROURKE

2/16/05  
Date

  
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CERTIFICATE OF SERVICE

In accordance with Section 304(c)(3) of the Clean Air Act, 42 U.S.C.

§ 7604(c)(3), I hereby certify that a copy of the foregoing Complaint has been served today by certified mail, return receipt requested on the following:

Hon. Alberto Gonzales  
Attorney General of the United States  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Hon. Stephen L. Johnson, Acting Administrator  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

2/16/05  
Date

Charles McPhedran  
Charles McPhedran, Senior Attorney  
Citizens for Pennsylvania's Future (PennFuture)

## CIVIL COVER SHEET 05-0186

The JS 44 civil cover sheet and the information contained herein either replace or supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Citizens for Pennsylvania's Future  
and O'Kourke, Charlotte H.

(b) County of Residence of First Listed Plaintiff Dauphin  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

See Attachment

## DEFENDANTS

Allegheny Energy Supply Co. LLC

County of Residence of First Listed Defendant Greene  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

See Attachment

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | PTF                                     | DEF   | PTF   | DEF   |
|---|---|---|---|
| Citizen of This State                   | <input type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Marine Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Adjustment of Judgment <input type="checkbox"/> 160 Marine Act <input type="checkbox"/> 170 Recovery of Detention of Ship <input type="checkbox"/> 180 Recovery of Detention of Ship (Not Veterans) <input type="checkbox"/> 190 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 200 Stockholders' Suits <input type="checkbox"/> 210 Other Contract <input type="checkbox"/> 220 Contract Product Liability <input type="checkbox"/> 230 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Auto Acc. Label & Similar <input type="checkbox"/> 330 Federal Employees' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 410 Agriculture <input type="checkbox"/> 420 Other Food & Drug <input type="checkbox"/> 425 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 430 Liquor Laws <input type="checkbox"/> 440 R.R. & Truck <input type="checkbox"/> 450 Airway Regs. <input type="checkbox"/> 460 Occupational Safety Health <input type="checkbox"/> 460 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Mgmt. Relations <input type="checkbox"/> 730 Labor Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Legislation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIW (405(g)) <input type="checkbox"/> 864 SSD Tab XVI <input type="checkbox"/> 865 BSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Sanctions Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Eminent Domain <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 249 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Accommodations <input type="checkbox"/> 445 Affirmative Action <input type="checkbox"/> 446 Amer. w/ Disabilities - Employment <input type="checkbox"/> 446 Amer. w/ Disabilities - Other <input type="checkbox"/> 449 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motion to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions			

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Filing ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC 7604

Brief description of cause: Violation of air emission standards

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

2/14/05

SIGNATURE OF ATTORNEY OF RECORD

*Chell*

FOR OFFICE USE ONLY

RECEIVED

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Attachment: Names and Addresses of Attorneys

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JS 44AREVISED OCTOBER, 1993

## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

## THIS CASE DESIGNATION SHEET MUST BE COMPLETED

## PART A

This case belongs on the (        Erie        Johnstown ☒ Pittsburgh ) calendar.

ERIE CALENDAR - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang

1.

or Warren, OR any plaintiff or defendant resides in one of said counties.2. JOHNSTOWN CALENDAR - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.3. Complete if on ERIE CALENDAR: I certify that the cause of action arose in                      County and that the                      resides in                      County.4. Complete if on JOHNSTOWN CALENDAR: I certify that the cause of action arose in                      County and that the                      resides in                      County.

## PART B (You are to check ONE of the following)

1. ☐ This case is related to Number                      Judge                     .2. ☒ This case is not related to a pending or terminated case.

## DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit

EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lead themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS &amp; CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

## PART C

1. CIVIL CATEGORY (Place x in only applicable category).

1. ( ) Antitrust and Securities Act Cases

2. ( ) Labor-Management Relations

3. ( ) Habeas Corpus

4. ( ) Civil Rights

5. ( ) Patent, Copyright, and Trademark

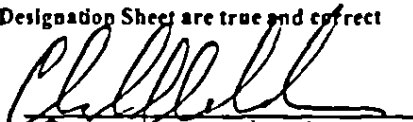
6. ( ) Eminent Domain

7. ☒ All other federal question cases8. ☒ All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest

9. ( ) Insurance indemnity, contract and other diversity cases.

10. ( ) Government Collection Cases (shall include HEW Student Loans (Education), VA Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, S.B.A. Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

Date: 2/14/05
  
 CHARLES MCPHERDIN  
 ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH SIDES MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.